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ABSTRACT

To best deal with the issue of law enforcement officers in the school, educators should establish a written policy. Two previous issues of this journal offered a model policy. In light of intervening legal and educational developments, a revised 1994 model is offered. Local education officials are prohibited from sharing student records with law enforcement officials without proper authorization. Court decisions regarding search and seizure affirmed school officials' right to search students under their jurisdiction; however, the greater the police involvement, the higher the standard required to justify the search. The individualized education plan process must be used to resolve serious misconduct by students with disabilities. The model statement of rules deals with the following: (1) investigation conducted in the educational environment; (2) taking a student into custody; (3) disturbance of school environment; (4) searches of students, lockers, and inanimate objects; (5) students with disabilities; (6) education records; (7) school-law enforcement liaison; (8) coordination of policies with law enforcement officials; and (9) staff development. (MLF)

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A Legal Memorandum

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A Legal Memorandum

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School Administrators And Law Enforcement Officials

As part of *Legal Memoranda* published in 1979 and 1985, NASSP offered a model policy and rules governing the appropriate relationship between school administrators and law enforcement officials investigating criminal law violations. These were taken from an earlier model developed by the Iowa Department of Education. In light of intervening legal and educational developments, a revised 1994 model is offered here.

The following information will help explain the need for some of the revisions contained in the current draft of the model policy and rules.

Education Records

Local school education officials are forbidden by federal law—under threat of loss of federal education funds—to share student records with law enforcement officials without proper authorization. This is true whether the law enforcement officials are present at the request of school officials or at their own initiative.

The Family Educational Rights and Privacy Act was enacted by Congress in 1974 to provide protection of the interests of students in their school records (20 U.S.C. Sec. 1232g). To this end the Act provides both for student and parental access to student records and for the protection of those records from improper release to persons outside the school system. (See NASSP *Legal Memorandum* "The Student's Privacy: A Developing Concept, Part One: Student Records," January 1983.)

Generally, release of such records requires prior written consent of the parents or adult student. None of the exceptions to this requirement, as it concerns elementary and secondary schools, expressly includes law enforcement officers.

There are, however, three ways law enforcement personnel may access the education records of elementary and secondary students without the written consent of parents:

- Through "directory information" such as name, address, and date of birth, which can be released to the general public under certain conditions

- By securing a judicial order or subpoena. A judge or other court officer will review the merits of the law enforcement need for access and the school must notify parents of the order or subpoena before complying. The apparent purpose of such advance notice is to allow parents an opportunity to legally challenge the order or subpoena if they so desire.

- By establishing, to the satisfaction of the educational agency, that an emergency exists and that the release of information is necessary to protect the health or safety of the student or other persons. Regulations promulgated by the U.S. Department of Education clearly establish the need for a bona fide emergency, and the provisions are to be strictly adhered to.

Search and Seizure

In January 1985, the U.S. Supreme Court ruled that school officials have the right to search students under their jurisdiction when there are "reasonable grounds for suspecting that the search will reveal evidence that the

student has violated or is violating either the law or the rules of the school," and the search is conducted in a reasonable manner. (*New Jersey* v. *T.L.O.*, 469 U.S. 325, 105 S.Ct 733, 744; 1985.)

Because there was no police involvement in the case considered, the Court made no reference in its opinion to school searches in which police might be involved. In the absence of specific statutory authority, other court decisions indicate that the greater the police involvement, the higher the standard required to justify the search. Direct involvement in student searches by law enforcement officers has resulted in a number of findings of illegal search.[1]

In other cases where law enforcement involvement was less direct or where law enforcement officers guaranteed no arrests or criminal prosecution would result from student searches, courts were willing to uphold the searches as school-related.[2] (For further discussion, see NASSP *Legal Memorandum* "The Student's Privacy: A Developing Concept, Part Two: School Searches," April 1983.)

To best deal with the issue of law enforcement officers in the school, educators should establish a written policy detailing the circumstances under which law enforcement officials will voluntarily be allowed access to students and what specific persons are authorized to summon law enforcement officials to the school.

Since the Supreme Court decision, the Eighth Circuit has rendered an important ruling regarding searches conducted jointly by a vice-principal and a police liaison officer assigned to a high school. (*Cason* v. *Cook*, 810 F.2d 188; 1987.) The court found that because a search of a student and her purse in an effort to find stolen money was conducted for school-related rather than law enforcement reasons, because the school administrator took the lead in the investigation and was merely assisted by the liaison officer, and since the administrator actually conducted the search, the educational search standard of reasonableness, rather than the higher standard of probable cause applicable to law enforcement officers was the appropriate legal test for the search.

Because reasonable cause had existed for the search, the mere presence of a police liaison officer during the investigation did not make the search illegal. That same court ruling also stated that school officials are not required to issue *Miranda*-type warnings when conducting investigations.

A number of recent court rulings have also upheld the legality of searches by school security guards using the same reasonableness standards as are applied to educators,[3] even when an off-duty policeman was involved.[4] However, problems remain when police are involved in educational situations in their law enforcement capacity.[5]

Students with Disabilities

Students with disabilities being served under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 present special problems when their conduct at school results in serious disruption of the school environment or involves criminal conduct. The current law indicates that in such situations, changes in educational placement are appropriate, but expulsion is at least difficult [6] and may not be feasible. As a result, some educators are turning to law enforcement officials to resolve their special education discipline problems.

While it may be appropriate to involve law enforcement officials in the investigations of criminal acts committed by students with disabilities—at least so long as the same practice is also used for similar conduct by nonhandicapped students—it may not be appropriate to use the legal system as an alternative way of dealing with school disciplinary problems presented by students with disabilities. Even when police become involved with a disruptive student with disabilities and take the student into custody, the educational issues remain when the student returns to school. The Individualized Education Plan (IEP) process must be used to resolve serious misconduct by students with disabilities.[7]

Other Recommendations

While direct case law about the appropriate relationships between school and law enforcement officials is limited, a number of authors have made prudent recommendations for establishing school policies and practices.

Issues of criminal investigations in the school setting are complex, and legally established procedures for police investigation are not very clear. School personnel must remember that they are not law enforcement officials and that police presence in school may disrupt the academic environment. To best deal with the issue of law enforcement officers in the school, educators should establish a written policy detailing the circumstances under which law enforcement officials will voluntarily be allowed access to students and what specific persons are authorized to summon law enforcement officials to the school. The written policy should require that regular advance communication be established between police and school administrators.[8]

Law enforcement officials wishing to contact students at school for any reason should be told to report their presence to the principal first. School officials must remember, however, that they may be breaking the law if they refuse demands for access to students, especially when arrests are imminent. School officials should not voluntarily allow students to be interviewed at school regarding crimes unrelated to the school, and law enforcement officers should be discouraged from making arrests at school.

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If law enforcement officers are asked to come to the school, the specific circumstances of the contact should be left to the discretion of the building administrator. Law enforcement officers should still report their presence to the building administrator and work through him or her. Inviting law enforcement officials to investigate matters at school when the school is not directly involved may be beyond a school official's legal authority.

In any case, school administrators should make a reasonable effort to notify parents of the situation. In the event the parents cannot be reached or cannot come to the school, the principal or a designee should be present during questioning by law enforcement officials. The school official should commit to writing what was said during questioning. The role of the school official is to attempt to safeguard the student's rights as much as possible.

The following model policy and rules are consistent with the decisional law and the recommendations of legal commentators summarized above.

Model Statement of Policy

It shall be the policy of the _____ School District that a reasonably cooperative effort be maintained between the school administration and law enforcement agencies. Law enforcement officials may be summoned to conduct an investigation of alleged criminal conduct on the school premises or during a school-sponsored activity or to maintain the educational environment. They may also be summoned to maintain or restore order when the presence of such officers is necessary to prevent injury to persons or property. Administrators have the responsibility and the authority to determine when the assistance of law enforcement officers is necessary within their respective jurisdictions. The school district's administrators shall at all times act in a manner that protects and guarantees the rights of students and parents.

Model Statement of Rules

I. Investigation Conducted in the Educational Environment

A. Initiated by School Administrators

1. Conducted by Administrators

Principals and their designees shall have the authority and duty to conduct investigations and to question students pertaining to infractions of school rules, whether or not the alleged conduct is a violation of criminal law. Such investigations shall be conducted in a way which does not unduly interfere with school activities.

Comment: Each school district should determine which specific administrators are to be assigned various responsibilities.

2. Conducted by Law Enforcement Officers

a. The principal shall determine when the necessity exists to contact law enforcement officers when the behavior of persons jeopardizes the safety of students, school staff, or school property, or interferes with the operation of the school or to conduct an investigation of alleged criminal behavior.

b. The principal may request that law enforcement officers conduct an investigation and question students who are potential witnesses of such alleged criminal behavior during school hours. A reasonable attempt shall be made to contact the student's parents, guardian, or representative prior to questioning by law enforcement officers. Reasonable requests of the parents, guardian, or representative shall be observed. Such contacts or attempted contacts with parents, guardian, or representative shall be documented by the administrator involved. In the absence of a student's parents, the guardian, or representative during any questioning of such students, the principal or other designated certificated school staff person shall be present. The principal or the principal's designee shall document what generally occurred during the interview.

Comment: A reasonable effort to contact the student's parents would normally include attempts to reach them at home, at work, or at places frequented by the parent. Reasonable requests of the parents would include requests to be present or to contact an attorney, if time and circumstances permit. This provision attempts to give guidance to the staff persons present during the investigation. Their primary function is to attempt to preserve the rights of students and parents without being advocates.

c. If the investigation has centered on any particular student suspected of such alleged criminal activity, the procedures for taking students into custody by the police set forth in Section II shall be followed to the extent that they do not interfere with reasonable law enforcement procedures.

B. Initiated by Law Enforcement Officers

Although cooperation with law enforcement officers will be maintained, it should not normally be necessary for law enforcement officers to initiate and conduct any investigation and questioning on the school premises during school hours pertaining to criminal activities unrelated to the operation of the school. Only when law enforcement officers can show an absolute need to do so will they be voluntarily permitted to conduct such an investigation during school hours. These circumstances should ordinarily be limited to those in which delay might result in danger to any person, flight from the jurisdiction by a person reasonably suspected of a crime, or destruction of evidence.

In such cases, the officers shall be requested to obtain prior approval of the principal or other designated person before beginning such an investigation on school premises. The administrator shall document the circumstances of such investigations as soon as practicable. Alleged criminal behavior related to the school environment brought to the principal's attention by law enforcement officers shall be dealt with under the provisions of Section I.A.2.

C. Questioning of Students During Investigation

1. Violations of School Rules

In instances where school rules have allegedly been violated, the principal or designee may contact the suspected rule violator or potential witness to the infraction.

a. The suspect student should be advised orally or in writing of the nature of the alleged offense and of the evidence, if any, against the student. The student shall be informed that he has a right to remain silent, and that anything he does say could be used against him in a disciplinary proceeding.

Comment: The provisions of a *Miranda*-type warning like that contained in the last sentence are not generally assumed to be required in an educational setting. However, other considera-

tions, such as the desirability of role modeling, fair treatment, and demonstrating the school's humane treatment of students may suggest such conduct. When the investigation is completed and it is determined that disciplinary action may be in order, due process requires that the student be allowed to present his or her version of the facts.

b. In questioning a potential student witness to an alleged disciplinary infraction, care should be taken by the administrator to ensure there is a reasonable likelihood that the student was indeed a witness. School officials should not engage in detailed questioning of students at random without reasonable cause in hope of gathering information as to misconduct. Probable witnesses should be told the nature of the alleged misconduct and the reason to believe that they were a witness. Such students should be given the opportunity to give their consent before answering questions of school officials.

Comment: Circumstances may arise when it would be advisable to have another adult present during questioning of students.

2. Violations of Criminal Law

a. During an investigation of a violation of school rules, it may come to the attention of the administrator that the investigated activity may also be a violation of criminal law. In proceeding with the investigation, the administrator can attempt to ascertain whether there is sufficient justification to believe that a criminal offense was committed that warrants contacting law enforcement officials.

Comment: Because violations of some school rules are also violations of criminal law, the discretionary judgment of the administrator involved is very important. It is not likely that law enforcement officials would be interested in bringing assault and battery charges against two students involved in a fight; however, sale or possession of illegal drugs would most assuredly be of interest to them.

b. Where a suspected violation of criminal law involving the operation of the school has occurred on the school grounds or during a school-sponsored activity, law enforcement officials may be notified and their presence requested for the questioning of suspected students. Unless circumstances dictate otherwise, questioning of the student shall not begin or continue until the law enforcement officers arrive. Reasonable attempts should be made to contact a student's parents, guardian, or representative who, unless an emergency exists, shall be given the opportunity to confer with the student and to be present with the student during such questioning.

Reasonable attempts should be made to contact a student's parents, guardian, or representative who, unless an emergency exists, shall be given the opportunity to confer with the student and to be present with the student during such questioning.

The administrator shall document the contact or attempted contact with the student's parents, guardian, or representative. In the absence of parent and student consent, a student should not be questioned by law enforcement officers. The law officers may wish to advise the student of his or her legal rights. If the parent and the student consent to the questioning, the investigation can continue. If the parent or student refuse consent to the questioning, the law enforcement officers will determine the course of action to be pursued.

Comment: Case law on the subject indicates school administrators are not required to issue *Miranda*-type warnings when investigating violations of school rules, and there is no clear legal requirement that school administrators

must give *Miranda*-type warnings to students suspected of criminal misconduct when such misconduct is also a violation of school rules. Whether or not law enforcement officers advise a student of his rights when a school administrator investigating criminal conduct not related to schools turns the case over to law enforcement officials is a matter that should be left to those officers.

II. Taking a Student into Custody

A. Students may not be released to law enforcement authorities voluntarily by school officials unless the student has been placed under arrest or unless the parent, guardian, or representative and the student agrees to the release. Administrators shall make reasonable objections to law enforcement authorities who attempt to remove students from school without placing them under arrest or without the acquiescence of the parent, guardian, or representative and the student.

Whenever the need arises to make arrests or take students into custody on school premises, the principal should make reasonable efforts to persuade the law enforcement officers to utilize a non-uniformed officer in making the arrest.

When students are removed from school by law enforcement authorities for any reason, every reasonable effort will be made to contact the student's parents, guardian, or representative immediately and such effort shall be documented. Whenever a student is removed from school without an arrest being made, or without acquiescence of the parent, guardian or representative, and the student, the administrator shall immediately contact a superior of the law enforcement officers involved and make objection to the removal of the student. The superintendent's office shall be notified immediately of any removal of a student from school by law enforcement officers under any circumstances.

B. The principal shall make reasonable efforts to persuade law enforcement officers not to make arrests or take students into custody on school premises. Whenever the need arises to make arrests or take students into custody on school premises, the principal should make reasonable efforts to persuade the law enforcement officers to utilize a non-uniformed officer in making the arrest.

C. When it is necessary to take a student into custody on school premises, and if time permits, the law enforcement officer shall be requested to contact the school principal and relate the circumstances necessitating such action. When possible, the principal shall have the student summoned to the principal's office where the student may be taken into custody.

D. When an emergency situation exists, the school principal may summon law enforcement officials to the school to take a student into custody.

E. When a student has been taken into custody or arrested on school premises without prior notification given to the principal, the school staff present shall encourage the law enforcement officers to notify the principal of the circumstances as quickly as possible. In the event the officers decline to notify the principal, the school staff members present shall immediately notify the principal.

F. If at all possible, the parents, guardian, or representative of the student shall be notified by the principal or other school administrator before the student is taken into custody by law enforcement officers, or as quickly as possible thereafter. The administrator shall document such notification or attempted notification.

III. Disturbance of School Environment

Law enforcement officers may be requested to assist in controlling disturbances of the school environment which the principal or other school administrator has found to be unmanageable by school personnel, and which have the potential of causing harm to students, staff members, and other persons, or to property. Such potential of harm includes members of the general public who exhibit undesir-

able or illegal conduct on school premises or at a school event held on school property, or who have been requested to leave by an administrator, but have refused or failed to do so.

IV. Searches of Students, Lockers, and Inanimate Objects

A. Searches of the person of students, lockers, and inanimate objects, including motor vehicles on school district property, shall be conducted according to school district policy.

B. Searches of the person of students, lockers, and inanimate objects, including motor vehicles on school district property, shall not be conducted at the mere request of law enforcement officers. Only when law enforcement officers have a search warrant or when on their authority they order the cooperation of school administrators, will school administrators and staff agree to conduct searches at school at the request of law enforcement officials.

Comment: In most situations, it would be a violation of the United States Constitution for school officials to conduct searches as agents of, or on behalf of, law enforcement officers in the absence of search warrants or probable cause. On the other hand, school officials acting with educational rather than law enforcement motivation need have only reasonable cause—a lower legal standard than probable cause required by law enforcement officials—to conduct a search on school property.

V. Students with Disabilities

A. School administrators and staff members shall not discriminate on the basis of disabilities. When decisions are made with regard to involvement of law enforcement officers at school or at school events, school administrators and staff members making such decisions shall do so without regard to whether the particular student or students involved have disabilities.

B. When law enforcement officials are contacted by school officials regarding a student with disabilities, or law enforcement officials interview or take a student with disabilities into custody, the school's administration will immediately notify members of the student's individual education program team and recommend that the team meet as soon as possible to consider the student's circumstances in light of his or her special education needs.

Comment: Currently developing legal interpretations indicate that school officials may involve law enforcement personnel when students with disabilities engage in illegal activities at school. However, it is clear that students with disabilities should not be treated differently than nondisabled students. For instance, it would be illegal discrimination to request law enforcement involvement in situations involving students with emotional or behavior disabilities, when law enforcement personnel are not typically involved in similar situations involving nondisabled students.

Serious misbehavior by students with disabilities, including potential criminal activity, should always be considered and, if appropriate, addressed, through the special education IEP process. It would likely be both illegal and discriminatory for school officials to substitute law enforcement and juvenile court procedures for the IEP procedures required to address the needs of students with disabilities under the Individuals with Disabilities Education Act (IDEA).

VI. Education Records

Education records of students and information contained in student education records may be shared with law enforcement officials in only three circumstances: written consent of the student's parents, legal guardian, or an adult student; proper judicial or administrative agency subpoena or order; a bona fide emergency situation in which the health or safety of the student or another person is involved. The burden of establishing appropriate grounds for sharing student education records or information contained in education records lies with the law enforcement personnel requesting the records.

VII. School-Law Enforcement Liaison

Comment: This model does not take into account ongoing relationships between school officials and

law enforcement officials, such as school liaison programs and programs in which law enforcement officers are assigned to schools. When considering adoption of this model, revision may be necessary to include any aspects of an ongoing relationship between the school and law enforcement officials.

VIII. Coordination of Policies with Law Enforcement Officials

School administrators shall meet at least annually with local law enforcement officials to discuss the school district's policy and rules regarding law enforcement contacts with the school district. Law enforcement officials will be asked to instruct their staff members regarding the terms of the school's policy and rules.

Comment: This provision is essential. While it is important that relations between law enforcement agencies and schools remain good, law enforcement officials must understand that school personnel are not their agents and that the school has a special responsibility to the students and parents in the community. The cooperation of law enforcement officials in controlling the actions of their subordinates is very important.

IX. Staff Development

School staff members shall be made familiar with the content of these provisions at least annually.

ENDNOTES

1. *E.g.*, M.J. v. State, 399 So. 2d 996, 998 (Fla. Ct. App. 1981); Picha v. Wielgos, 410 F.Supp. 1214 (N.D., Ill., 1976); Piazzola v. Watkins, 442 F.2d 284 (5th Cir., 1971).
2. *E.g.*, Doe v. Renfrow, 475 F.Supp. 1012 (N.D., Ind., 1979), *rev'd on other grounds*, 631 F.2d 91 (7th Cir., 1980); Zamora v. Pomeroy, 639 F.2d 662 (10th Cir., 1981).
3. E.g., In re Devon T., 584 A.2d 1287 (Md. Ct. App. 1991); In re Frederick B., 237 Cal. Rptr. 228 (Cal. Ct. App. 1987).
4. Salazar v. Luty, 731 F.Supp. 45 (S.D. Tx. 1991).
5. *See*, People v. P.E.A., 754 P.2d 382 (Colo. 1988); In re Alexander B., 270 Cal. Rptr. 342 (Cal. Ct. App. 1990).
6. Honig v. Doe, 484 U.S. 305, 108 S.Ct. 592 (1988).
7. See "Discipline of Students with Disabilities: A Decision-Making Model for Principals," *NASSP Bulletin*, February 1993.
8. A. Moriarty, R. G. Maeyama, and P. J. Fitzgerald, "A CLEAR Plan for School Crisis Management," *NASSP Bulletin*, April 1993.

This Legal Memorandum *was written by Larry D. Bartlett, Associate Professor, Planning, Policy and Leadership Studies, The University of Iowa College of Education, and edited by Ivan B. Gluckman, NASSP Director of Legal Services.*

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